

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

NAVY SEALS 1-3, et al.,

Plaintiffs,

v.

LLOYD AUSTIN, III, in his official capacity as
Secretary of Defense, *et al.*,

Defendants.

Case No. 4:21-cv-01236-O

DEFENDANTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF DEFENDANTS'
FIRST MOTION TO COMPEL, FILED WITH REPLY
Table of Appendix

Bates Stamps	Exhibit	Description
App.000779–App.000781	DEX17	Redacted Final RAR Appeal Denial Memorandum (Feb. 15, 2022)
App.000782–App.000790	DEX18	Redacted RAR Appeal Denial Memorandum (Jan. 28, 2022) and Selected Submissions

Dated: September 9, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director

/s/ Amy E. Powell
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Counsel for Defendants

DEX17



DEPARTMENT OF THE NAVY

CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

1730
N00

15 February 2022

From: Chief of Naval Operations
To: HT2 [REDACTED] USN
Via: Commander, Puget Sound Naval Shipyard and Intermediate Maintenance Facility

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION
REQUIREMENT ICO HT2 [REDACTED] USN

Ref: (a) DCNO (N1) ltr 1730 Ser N1/115118 of 15 Nov 21
(b) DoD Instruction 1300.17 of 1 Sep 2020
(c) SECNAVINST 1730.8B
(d) ASN (M&RA) memo of 6 Jun 13
(e) BUPERSINST 1730.11A
(f) CHBUMED ltr 6320 Ser M44/21UM41363 of 28 Oct 21
(g) NAVADMIN 190/21

1. Your appeal of reference (a) is disapproved. I am disapproving your appeal both because you have not demonstrated a sincerely held religious belief and due to the Navy's governmental interest in preventing spread of diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, and health and safety, at the individual, unit, and organizational levels. A waiver of immunizations would have a predictable and detrimental effect on the readiness of you and the Sailors who serve alongside you. Granting your request will have a direct and foreseeable negative impact on the Navy's governmental interest in military readiness and health of the force.

2. References (b) through (e) designate me as the final appeal authority for requests for religious accommodation.

3. I considered your original request, your appeal, and the endorsements on your correspondence. I evaluated your request in two parts: as a religious accommodation request and as a request for accommodation of moral principles.

a. Religious Accommodation. Your request is grounded in moral concepts such as freedom and civics, but does not establish the religious nature of any of your beliefs or demonstrate how those beliefs are substantially burdened. A chaplain assessed your belief system to be most closely aligned with secular humanism, a non-religious system of moral philosophy. Therefore, your request is denied for failure to demonstrate a sincerely held religious belief under the Religious Freedom Restoration Act, 42 U.S.C. Chapter 21B.

b. Moral Accommodation. Sincerely held moral beliefs are entitled to accommodation under Section 533(a)(1) of Public Law 112-239, unless accommodation would adversely impact

military readiness, unit cohesion, good order and discipline, or health and safety. These are the same governmental interests which apply to religious accommodations, but with a lower legal burden on the Navy. As discussed above, granting your request will have a direct and foreseeable negative impact on the Navy's governmental interest in military readiness and health of the force.

4. As explained in reference (f), while no vaccine is 100 percent effective, vaccines with lower effectiveness still reduce disease incidence in the population, reduce an individual's risk of contracting the disease, and generally reduce the severity of disease for those who do contract the illness. In addition, the continuing coronavirus disease 2019 (COVID-19) pandemic further highlights the importance of vaccination in both individual and unit force health protection. Your assignment to a shipyard and the critical nature of shipyard production, which can be interrupted by COVID-19 related effects, weighed in my decision.

5. Vaccination of Navy personnel can impact both individual and unit mission accomplishment. It reduces the risk to the individual for disease-related performance impairment, and it reduces the risk to the unit for disease outbreaks of contagious diseases such as COVID-19. While non-pharmaceutical measures such as personal hygiene, mask wearing, and social distancing can also reduce the risk of disease outbreaks, they too are not 100 percent effective and must be implemented in conjunction with immunization to reduce the risk of mission failure. As explained in reference (f), these measures are not as effective as vaccination in maintaining military readiness and the health of the force.

6. You must now become fully vaccinated against COVID-19 in accordance with reference (g). You are free to choose which authorized COVID-19 vaccine to take, but you must receive a vaccine within five calendar days upon receipt of this letter. If you choose a COVID-19 vaccine that requires two doses, you must complete the series as prescribed.

7. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. Our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.


M. M. GILDAY

Copy to:
ASN (M&RA)
OPNAV (N131)
BUMED

DEX18



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

1730
N00
28 Jan 22

From: Chief of Naval Operations
To: TM1(SS) [REDACTED] USN
Via: (1) Commanding Officer, [REDACTED]
(2) USS [REDACTED]

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION
REQUIREMENTS ICO TM1 [REDACTED] USN

Ref: (a) DCNO (N1) ltr 1730 Ser N1/115961 of 24 Nov 21
(b) DoD Instruction 1300.17 of 1 Sep 2020
(c) SECNAVINST 1730.8B
(d) ASN (M&RA) memo of 6 Jun 13
(e) BUPERSINST 1730.11A
(f) BUMED 6320 Ser M44/21UM42224 of 9 Nov 21
(g) NAVADMIN 190/21

1. Your appeal of reference (a) is disapproved. I am disapproving your appeal due to the Navy's compelling government interest in preventing spread of diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, and health and safety, at the individual, unit, and organizational levels. A waiver of immunizations would have a predictable and detrimental effect on the readiness of you and the Sailors who serve alongside you. Granting your request will have a direct and foreseeable negative impact on the compelling governmental interest in military readiness and health of the force. I further find that there are no less restrictive means to achieve the Navy's compelling governmental interest.

2. References (b) through (e) designate me as the final appeal authority for requests for religious accommodation.

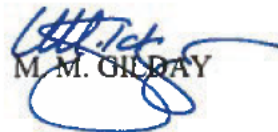
3. I considered your original request, your appeal, and the endorsements of your correspondence. Specifically, your assignment to deployable submarine weighed heavily in my decision. I echo the concerns expressed by Commander, [REDACTED] based on the strategic importance of such a vessel. Moreover, the nature of the physical environment on such a vessel was a significant factor in my decision. In reviewing your appeal, I evaluated the request under the assumption that your religious beliefs are sincere, despite the chaplain's finding to the contrary, and that those sincere beliefs would be substantially burdened. As explained in reference (f), while no vaccine is 100 percent effective, vaccines with lower effectiveness still reduce disease incidence in the population, reduce an individual's risk of contracting the disease, and generally reduce the severity of disease for those who do contract the illness. In addition, the current coronavirus disease 2019 (COVID-19) pandemic further highlights the importance of vaccination in both individual and unit force health protection.

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION
REQUIREMENTS ICO TM1 [REDACTED] USN

4. Vaccination of Navy personnel can impact both individual and unit mission accomplishment. It reduces the risk to the individual for disease-related performance impairment, and it reduces the risk to the unit for disease outbreaks of contagious diseases such as influenza and COVID-19. While non-pharmaceutical measures such as personal hygiene, mask wearing, and social distancing can also reduce the risk of disease outbreaks, they too are not 100 percent effective and must be implemented in conjunction with immunization to reduce the risk of mission failure. As explained in reference (f), these measures are not as effective as vaccination in maintaining military readiness and the health of the force.

5. You must now become fully vaccinated against COVID-19 in accordance with reference (g). You are free to choose which authorized COVID-19 vaccine to take, but you must receive a vaccine within five calendar days upon receipt of this letter. If you choose a COVID-19 vaccine that requires two doses, you must complete the series as prescribed. Your command will set compliance dates for other required immunizations, including the annual influenza vaccine.

6. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. Our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.


M. M. O'DAY

Copy to:
ASN (M&RA)
OPNAV (N131)
BUMED



DEPARTMENT OF THE NAVY
SUBMARINE SQUADRON 6
9168 SECOND ST, STE 200
NORFOLK, VA 23551-2318

1730
Ser CSS6/494
28 Sep 21

FIRST ENDORSEMENT on TM1(SS) [REDACTED] ltr of 21 Sep 21

From: Commanding Officer, [REDACTED]
To: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education)
(CNO N1)

Subj: REQUEST FOR WAIVER OF POLICY IN SUPPORT OF RELIGIOUS PRACTICE
ICO TM1(SS) [REDACTED]

Ref: (e) MILPERSMAN 1730-020
(f) SecDef ltr of 24 Aug 21
(g) SECNAV WASHINGTON DC 302126Z Aug 21 (ALNAV 062/21)
(h) CNO WASHINGTON DC 311913Z Aug 21 (NAVADMIN 190/21)

Encl: (1) LCDR [REDACTED] Memorandum of 23 Sep 21 and Interview Checklist

1. Forwarded in accordance with references (a) through (c), (e), and (f), recommending disapproval in full as it relates to all environments. I obtained the advice of a judge advocate and chaplain in making this recommendation, and TM1(SS) [REDACTED] has been appropriately counseled on his request.
2. Coronavirus disease 2019 (COVID-19) poses a persistent health and readiness threat to Navy service members worldwide and is rapidly transmissible within units irrespective of the operational environment or mission. Training, equipping, and deploying mission ready naval forces within the COVID-19 environment demands strict compliance with health protection measures by the entire force. Vaccination is the most effective of all available health protection measures for the prevention of hospitalization and death from COVID-19 for individual members and the adverse mission impact of widespread manifestation of COVID-19 in the force. As such, per references (f) through (h), vaccination against COVID-19 has been determined to be necessary to protect the entire force and defend the American people.
3. TM1(SS) [REDACTED] objects to receipt of the COVID-19 vaccine based on his religious belief that his body has the power to fight off all infectious diseases and the introducing of any foreign substance into his body is in contradiction to his faith. Per enclosure (1), TM1(SS) [REDACTED] religious beliefs were deemed to be not sincerely held due to a lack of consistent practice. While the Navy makes every effort to accommodate the religious practices of its members consistent with mission accomplishment, the risk to the force and mission posed by the COVID-19 pandemic is a compelling operational reason to disapprove TM1(SS) [REDACTED] request. Moreover, in the aggregate, accommodation of this type of religious practice would have a significant impact on military readiness and mission accomplishment as both

members and units would remain exposed to the medical and operational risks posed by COVID-19.

4. To date, no other service members at this command have been granted a permanent exemption from COVID-19 immunization for religious or non-religious purposes.

5. TM1(SS) [REDACTED] has expressed a religious objection to all COVID-19 vaccines currently available. As such, there is no available alternative vaccination that meets both the religious need expressed by TM1(SS) [REDACTED] and the Navy's immunization requirements.

6. In making this recommendation to deny TM1(SS) [REDACTED]'s religious accommodation request, I have determined that the denial furthers compelling government interests described in references (f) through (h). I have further determined that there is no alternative, less restrictive means of accommodating the request.

7. My point of contact for this matter is LCDR [REDACTED], who may be reached at [REDACTED] or by e-mail at [REDACTED]@navy.mil.


J. K. JUERGENS

Copy to:
OPNAV N131
TM1(SS) [REDACTED]



CUI
DEPARTMENT OF THE NAVY
USS COLUMBUS (SSN 762)
UNIT 100156 BOX 1
FPO AE 09051-5600

IN REPLY REFER TO:
1730
21 Sep 21

From: TMI(SS) [REDACTED]
To: Commander, Navy Personnel Command
Via: (1) LCDR [REDACTED] Command Chaplain, [REDACTED]
(2) Commanding Officer, [REDACTED]

Subj: REQUEST FOR WAIVER OF POLICY IN SUPPORT OF RELIGIOUS PRACTICE

Ref: (a) DoD Instruction 1300.17 of 1 September 2020
(b) SECNAVINST 1730.8B
(c) BUPERINST 1730.11A
(d) Holy Bible

1. Pursuant to references (a) through (d), I hereby request a religious accommodation from Navy policy to be exempt from taking the COVID and influenza immunizations in accordance with MILPERSMAN 1730-020 Immunization Exemptions for Religious Beliefs that my body is a holy temple. "Or do you not know that your body is a temple of the Holy Spirit within you, who you have from God? You are not your own, for you were bought with a price glorify God in your Body" 1 Corinthians 6:19-20. "If anyone destroys Gods temple, God will destroy him. For Gods temple is Holy and you are that temple" 1 Corinthians 3:17. "You know the commandments, do not murder, do not commit adultery, do not steal, do not bear false witness..." Mark 10:19
2. My request is based on my religious belief that the Lord gave me this body (my holy temple) to protect and use to glorify Him. I cannot in good conscience inject that Holy temple with an experimental drug that poses a serious risk of death or injury. I was baptized almost 16 years ago and religiously read my bible and to inject my body with this poison is not something I can do knowing what it will mean for my soul. I am requesting to be Exempt from taking these vaccines to keep my conscience clean and my souls from harm.
3. I certify that I understand that any approved or partially approved waiver may not be appropriate for future duty to which I may be assigned, including operational, non-operational or training command(s), and may be suspended or withdrawn in accordance with reference (c).



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CUI

23 SEP 2021

CHAPLAIN MEMORANDUM FOR THE RECORD

From: LCDR [REDACTED] CHC, USN

To: Commander, [REDACTED]

Via: Commander, [REDACTED]

Subj: REQUEST FOR A WAIVER OF POLICY TO ACCOMMODATE PRACTICE
BASED ON RELIGIOUS BELIEF ICO TM1(SS) [REDACTED]

Ref: (a) SECNAVINST 1730.8B CH-1
(b) SECNAVINST 1730.9A
(c) BUPERSINST 1730.11A

1. TM1(SS) [REDACTED] has submitted a request for accommodation of a religious practice per reference (a). Per reference (c), I interviewed the requestor on 23 SEP 2021. I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that referral for confidential chaplain support was available.

2. Nature of the request. TM1(SS) [REDACTED] is requesting a religious accommodation from Navy policy for COVID-19 vaccination. TM1(SS) [REDACTED] holds a religious belief that that his body is a holy temple made by God and therefore should not be injected with experimental medicines or vaccines.

3. Basis. TM1(SS) [REDACTED] believes that the COVID-19 vaccine, along with the other vaccines, go against his sincerely held belief that he is forbidden to introduce foreign substances into his body that change or manipulate how God created or designed his. TM1(SS) [REDACTED] NAVPERS 1070/602 (Page 2) reflects his religious belief.

4. Alternate means. TM1(SS) [REDACTED] is not open to any COVID-19 vaccine as they are all deemed to be experimental and foreign.

5. Sincerity. Utilizing the Chaplain Interview Checklist, I deemed TM1(SS) [REDACTED] to not be credible and consistent in his demeanor and practice in his religious belief. He does not carry this same religious concern into other areas of life and the main point of contention seems to be medical in nature (that the vaccine is experimental). He also failed to have any supporting documentation or endorsement from religious leaders. I believe TM1(SS) [REDACTED] request to not be sincere and inconsistent with his religious faith.

6. My contact information is [REDACTED] or via e-mail at [REDACTED]@navy.mil.

LCDR [REDACTED]

CHAPLAIN INTERVIEW CHECKLIST TEMPLATE

Requestor: TM1(SS)			Interview Date: 21 SEP 2021		
Name: [REDACTED]			Chaplain Interviewer: [REDACTED]		
Phone: [REDACTED]			Phone: [REDACTED]		
Email: [REDACTED]			E-mail: [REDACTED]		
Command: [REDACTED]			Chaplain's Command: [REDACTED]		
Interview Preliminaries					
Yes	No	N/A			
X			Chaplain reviewed policy and doctrine on religious accommodation and the policy for which the requestor is seeking accommodation.		
X			Applicant was notified that the interview is not confidential and will be used to advise the command.		
X			Chaplain explained to the applicant that confidential support can be received from another chaplain.		
	X		Applicant has been granted a waiver for this practice previously.		
X			Applicant's Page 2 (NAVPERS 1070/602) reflects the belief cited in the application.		
Type of Waiver Requested					
Yes	No	N/A			
	X		Uniform standards		
	X		Grooming standards		
X			Immunization requirements		
	X		DNA sampling		
	X		Other (Please describe):		
Interview					
Yes	No	N/A			
	X		Requestor's religious beliefs seemed honestly and sincerely held using one or more of the following factors:		
	X		1. Requestor was credible (consistently keeps tenets, practices, etc.).		
	X		2. Requestor's demeanor and pattern of conduct are consistent with the request.		
X			3. Requestor participates in activities associated with the belief(s).		
	X		4. Other persons supporting the claim are credible.		
	X		5. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.		
X			Alternate means of accommodating the practice were explored in the interview.		
Process Checklist					
Yes	No	N/A			
X			Chaplain has prepared a memorandum documenting the interview.		
X			Chaplain reviewed memorandum with applicant and provided a copy.		
X			Chaplain submitted the memorandum and this document to the commanding officer via chain of command.		
X			Chaplain referred applicant to command to process request.		

ADMINISTRATIVE REMARKS

NAVPERS 1070/613 (REV. 08-2012) PREVIOUS EDITIONS ARE OBSOLETE

SUPPORTING DIRECTIVE MILPERSMAN 1070-320

SHIP OR STATION:

SUBJECT:

MANDATORY COVID-19 VACCINE (PFIZER-BIONTECH)

☐ PERMANENT☒ TEMPORARY

AUTHORITY (IF PERMANENT):

1. In response to a declared national public health emergency and in accordance with NAVADMIN 190/21, this provides formal notice that you are ordered to be fully vaccinated against the Coronavirus Disease 2019 (COVID-19) for the purposes of force health protection, mission assurance, and readiness.

On 23 August 2021, the U.S. Food and Drug Administration (FDA) approved full licensure for the Pfizer-BioNTech COVID-19 vaccine for the prevention of COVID-19 disease. FDA-approved vaccines undergo the FDA's standard process for reviewing the quality, safety, and effectiveness of medical products. The vaccine is effective in preventing COVID-19 and potentially serious outcomes including hospitalization and death.

On 24 August 2021, the Secretary of Defense directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19. Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that have received full licensure from the FDA.

On 31 August 2021, NAVADMIN 190/21 mandated COVID-19 vaccination for all Navy uniformed personnel who are not exempt.

2. In accordance with NAVADMIN 190/21, you are hereby ordered to initiate vaccination against COVID-19 no later than 30 September. This is a lawful order. Failure to comply with this order constitutes a violation of the Uniform Code of Military Justice and may result in punitive or administrative action unless otherwise exempt. Not later than 30 September, you are ordered to initiate vaccination with an FDA-licensed vaccine or, optionally and alternatively, with a vaccine approved for emergency use.

3. COVID-19 vaccines that have received Food and Drug Administration (FDA) licensure are a readiness requirement and are mandated for service members. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization (EUA) or World Health Organization Emergency Use Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated in compliance with this order.

4. Prior to receiving a COVID-19 vaccine, you will be provided access to healthcare providers at Navy vaccination sites to address questions or concerns and receive counseling regarding COVID-19 vaccination.

The Department of Defense, the Department of the Navy, and this command are firmly committed to safeguarding the health and safety of our military members. Vaccinating every eligible military member will significantly enhance readiness, protect individual and unit health, and positively impact our families, neighborhoods and communities in which we serve.

WITNESS

9/20/21

ENTERED AND VERIFIED IN ELECTRONIC SERVICE RECORD:

VERIFYING OFFICIAL RANK OR GRADE/TITLE:

DATE:

SIGNATURE OF VERIFYING OFFICIAL:

NAME (LAST, FIRST, MIDDLE):

SOCIAL SECURITY NUMBER:

BRANCH AND CLASS:

USN

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